

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

JUN 26 1990

WARREN L. TADLOCK, CLERK  
BY: 2 Deputy Clerk

In Re:

SAMUEL J. CORDARO, d/b/a  
SPRINGHOUSE RESTAURANT,

Debtor.

) Case No. A-B-88-10423  
) Chapter 11  
)  
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JUDGMENT ENTERED ON 6-26-90

ORDER DETERMINING CLAIM

This matter is before the court on the debtor's objection to the claim of John E. Owens, Jimmy H. Owens, William Wise and Edward L. Williams, d/b/a Smoky Mountain Rangers (hereinafter "Rangers"). The court has concluded that the objection should be sustained and the claim denied.

BACKGROUND FACTS

As a preliminary matter, the court must comment on the evidence in this matter. All of the witnesses who testified at the hearing were interested parties, and that fact permeated their testimony. The facts recited below are those found by the court based upon its observation of the witnesses, their demeanor and interest, and its best determination of the facts.

The debtor operates a lounge in Maggie Valley, North Carolina, at which it provides live musical entertainment. The claimants constitute a band known as the "Smoky Mountain Rangers" from Newport, Tennessee. In March, 1987, the debtor and the Rangers entered into a contract which provided that the Rangers would play at the debtor's lounge four nights a week for a period of six months, and be paid \$400 per night by the debtor.

The Rangers first played at the lounge on March 21, 1987. They left their equipment set up at the lounge by agreement with the debtor. They next played Wednesday through Saturday nights the following week, and finally played on April 1 and 2 of the next week. The debtor paid the Rangers in full for each night they played. On April 3, 1987, Maggie Valley (and all of Western North Carolina) received a late and heavy snowstorm.<sup>1</sup> Mr. Cordaro called one of the Rangers and told him not to try to travel to Maggie Valley on April 3 (Friday) because the roads were treacherous. So they did not play that night. He also called again the next day, April 4 (Saturday) and advised the band not to come that night. The Rangers were not scheduled to play Sunday night (April 5). But, John Owens, the Rangers' lead guitarist was advised by an unidentified source that another band was at the lounge using the Rangers' equipment. Owens assembled the group and they drove to the lounge to investigate. Owens confronted Cordaro angrily<sup>2</sup> and, after some words, the Rangers packed up their equipment and left the premises.

After consulting an attorney on April 8, and on the advice of that attorney, the Rangers returned to the lounge the evening of April 8 -- ostensibly for the purpose of performing. But, rather than unload their equipment, they first went into the

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<sup>1</sup> This same storm stranded Appalachian Trail thru-hikers in the Smokies, grounded the Concorde at the Asheville airport and smashed the court's woodshed in Brevard.

<sup>2</sup> If Owens' hostility to opposing counsel in cross-examination is any indication, this would have been a most unpleasant altercation.

lounge to talk to Cordaro. Cordaro said he did not want them back because they had packed up and left Sunday. Owens demanded to be "fired" but Cordaro refused to comply. Ultimately, Cordaro summoned a Sheriff's deputy and the Rangers left. They went directly to the Best Western Inn in Newport where they had previously arranged an engagement. They played at the Best Western for the remainder of the six month period of their contract with the debtor and continued with that employment. Their pay was based upon a percentage of the gate receipts and averaged only \$400 per week. The Rangers made no contact with the debtors after April 8, 1987, until they filed their claim for \$26,400.00 in this proceeding on March 13, 1990.

#### DISCUSSION

The court has concluded that the debtor-Rangers contract was terminated on Sunday night, April 5, 1987, when the Rangers packed up their equipment and left the debtor's lounge in Maggie Valley. Whether this is viewed as a mutual breach or a mutual rescission, the effect of each party's actions and intentions was to dissolve their relationship and their obligations to one another.

It is apparent that after the altercation on Sunday night (which is not without some justification) the Rangers left with their equipment, not intending to return -- and that the debtor did not intend for them to return. The Rangers' return on the following Wednesday was not a good faith effort to perform pursuant to the contract, but was a sham effort prompted by legal

advice to do so, apparently in order to set up this claim. The Rangers did not even begin to unload their equipment before confronting Cordaro and demanding to be "fired." They returned immediately to another job they had previously arranged. And no demand or other contact was made with the debtor until the present claim was filed. Consequently, the court finds and concludes from all of the credible evidence that the parties mutually terminated their contractual obligations on Sunday, April 5, 1987.

Alternatively, the court also concludes that any damages the Rangers allegedly suffered are too speculative to support an award, even if the court had found that the debtor breached the contract with the Rangers. Their earnings at the Best Western were determined by the number of people who attended their shows. Consequently, it is dependent on their ability to attract customers and is too variable and indefinite to justify any damage award.

#### CONCLUSION

The debtor paid the Rangers for all of their work prior to termination of their contract. There were no monies due after the termination of the contract. Consequently, the Rangers have no claim against the debtor.

It is therefore ORDERED that:

1. The debtor's objection to the claim of John E. Owens, Jimmy H. Owens, William Wise and Edward L. Williams in the amount of \$26,400.00 is sustained; and

2. The claim of John E. Owens, Jimmy H. Owens, William Wise and Edward L. Williams in the amount of \$26,400.00 is denied.

This the 26<sup>th</sup> day of June, 1990.

George R. Hodges  
George R. Hodges  
United States Bankruptcy Judge

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